

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

FRIDAY, THE 8TH DECEMBER 2006 / 17TH AGRAHAYANA 1928

Crl.L.P..No. 656 of 2006()

ST.103/2005 of J.M.F.C.-VII, TRIVANDRUM

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PETITIONER/COMPLAINANT

A.VENUGOPALAN,
P.A. TO D.G.M. OFFICE OF G.M.(MOBILE SERVICE),
BSNL, JEWS ROAD, PULIMOODU,
THIRUVANANTHAPURAM.

BY ADV. SRI.S.M.PREM
SMT.K.P.SANTHI

RESPONDENTS: ACCUSED

1. STATE OF KERALA,
REP. BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.
2. K.GOPAKUMAR,
SON OF KRISHNAN, KILIVILAKOM VEEDU,
KALADY, KARAMANA, THIRUVANANTHAPURAM.

R1-BY P.P.C.M. NAZAR

THIS CRIMINAL LEAVE PETITION HAVING COME UP FOR ADMISSION
ON 08/12/2006, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

K. THANKAPPAN, J.

Crl. L.P.No.656 OF 2006

Dated this the 8th day of December, 2006.

O R D E R

Petitioner is the complainant in S.T.No.103/2005 on the file of the Judicial Magistrate of First Class-VII, Thiruvananthapuram. It is alleged in the complaint that the 2nd respondent had issued Ext.P1 cheque in favour of the petitioner in discharge of a debt of Rs.2,50,000/=. On presentation of the cheque for encashment, it is dishonoured on the ground of insufficiency of fund with the account of the 2nd respondent. Hence, the complaint filed after completing the statutory requirements. To prove the case against the 2nd respondent, the complainant himself was examined as PW1 and relied on Exts.P1 to P7. On closing the prosecution evidence, the 2nd respondent was questioned under Section 313 of the Code of Criminal Procedure. Denying the allegation levelled against the 2nd respondent he stated that he had never borrowed Rs.2,50,000/= from the petitioner/complainant as alleged in the complaint, at the same time, he admits that he had received an amount of

Rs.30,000/= for and on behalf of DW1. To prove this case, the 2nd respondent was examined himself as DW2 and got examined the other witness, DW1, who accepted Rs.30,000/= from the complainant. It is proved before the court that the amount claimed by the petitioner is incorrect. Relying on the evidence on behalf of the respondent, the trial court found that the case set up by the petitioner in the complaint is not proved against the respondent. In the above circumstances, the trial court on following the dictum laid down in the judgment of this Court reported in **Narayana Menon v. State of Kerala** (2006 (3) KLT 401) held that the petitioner failed to discharge his burden that there was a transaction between himself and the 2nd respondent so as to issue Ext.P1 cheque in favour of the petitioner.

On considering these aspects and on hearing the counsel appearing for the petitioner, this Court is of the view that the judgment of the trial court requires no reconsideration by this

Court. Consequently, the leave application stands dismissed as meritless.

K. THANKAPPAN, JUDGE.

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